Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Telephone Number Portability	)	CC Docket No. 95-116
	)	
CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues	)	

JOINT PETITION FOR STAY PENDING JUDICIAL REVIEW

SUMMARY AND INTRODUCTION

Pursuant to 47 C.F.R. §§ 1.41, 1.43, the United States Telecom Association ("USTA") CenturtyTel, Inc., and CenturtyTel of Colorado, Inc. (collectively, "petitioners") request the Commission to stay the *Wireless-Wireline Porting Order*.[1] The Commission's decision to require wireline local exchange carriers ("LECs") to port numbers to any wireless carrier that provides service in the customer's rate center – even if the wireless carrier lacks any numbering resources or point of interconnection in that rate center – was procedurally improper and substantively inequitable. In 1997, the Commission tasked the North American Numbering Council ("NANC") – a collaborative industry body – with resolving, among other issues related to intermodal number portability, the issue that the Commission purported to resolve in the *Order*. The NANC was unable to resolve the issue and sought further guidance from the Commission.

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[1] Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, *Telephone Number Portability*, CC Docket No. 95-116, FCC 03-284 (rel. Nov. 10, 2003) ("*Order*").

But instead of providing that guidance, and without issuing a notice of proposed rulemaking to alert the industry that the process the Commission had established would be abandoned, the Commission simply adopted a new rule. Because the Commission's rule requires number portability even when the telecommunications subscriber's location changes, the new rule requires location portability – in contradiction of the Commission's prior rule. Moreover, the rule the Commission chose puts wireline carriers at a fundamental disadvantage. It permits wireless carriers to port the numbers of, and thereby compete for, wireline customers even if the wireless carriers have neither number resources nor a point of interconnection within the rate center to which the numbers are assigned. At the same time, it *prevents* wireline carriers from competing for the wireless carriers' customers in those same circumstances.

Allowing the new rules to go into effect would cause severe harm to petitioners. Customers will port wireline numbers to wireless carriers pursuant to the unlawful rules, but petitioners will be unable to compete for customers currently served by wireless carriers. Such net customer losses – resulting purely from regulatory favoritism – will cause petitioners irreparable loss of revenue and goodwill. By contrast, no party will suffer harm if the status quo is maintained during a period of review: indeed, most wireless carriers have fought LNP tooth and nail and should not be heard to claim that they will suffer if wireline-wireless LNP is further delayed.

Moreover, the public interest will benefit from the avoidance of expense and customer confusion that the new rules will surely cause. For example, the Commission failed to address how consumers will be informed about and protected against the loss of E911 capability when switching from a wireline to a wireless phone. Nor did the Commission address the tremendous

consumer cost that will be generated by implementation of LNP capability in small, rural exchanges. A stay will permit the Commission to address those issues in an orderly fashion.

Because of the severe harm that will be caused by these rules if they are permitted to take effect on November 24, 2003, and to allow sufficient time for a reviewing court to address a stay motion in the event that the Commission does not grant relief, petitioners respectfully request action on this petition by November 20, 2003.

BACKGROUND

The *Order* is based on the premise that wireline carriers have long been under an obligation to port numbers to requesting commercial mobile radio service ("CMRS") providers. *See Order* ¶ 5. In fact, wireline carriers have never before been required to port numbers to wireless providers. As the Commission is well aware, with a few recent exceptions, wireless providers have long been united in *opposing* implementation of local number portability for CMRS and have never previously developed the ability to port out or to port in telephone numbers, wireless or wireline. Accordingly, the Commission has never resolved the basic issues of law and policy that would make intermodal number portability possible.

After the Commission determined the basic timetable and methodology for LNP in the *First Report and Order*,[2] the Commission turned to the NANC to develop technical guidelines for implementation and administration of the system. In the *Second Report and Order*,[3] the Commission adopted the recommendations of the NANC, which were codified by reference in the Code of Federal Regulations. *See* 47 C.F.R. § 52.26(a). But the NANC's recommendations did not provide a basis for implementation of wireline-wireless (or "intermodal") LNP. Indeed,

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[2] First Report and Order and Further Notice of Proposed Rulemaking, *Telephone Number Portability*, 11 FCC Rcd 8352 (1996).

[3] Second Report and Order, *Telephone Number Portability*, 12 FCC Rcd 12281 (1997).

the Cellular Telecommunications and Internet Association ("CTIA") itself argued that the NANC guidelines could not be considered a basis for intermodal porting because the report did not address, among other issues, "how the differences between service area boundaries for wireline versus wireless services will be accounted for." *Second Report and Order*, 12 FCC Rcd at 12332, ¶ 88. Thus, the Commission held that its adoption of the NANC recommendations "should not be viewed in any way as an indication that we believe our plan for implementing local number portability is complete. The industry, under the auspices of the NANC, will probably need to make modifications to local number portability standards and processes as it . . . obtains additional information about incorporating CMRS providers into a long-term number portability solution and interconnecting CMRS providers with wireline carriers already implementing their number portability obligations." *Id.* at 12333, ¶ 90. The Commission therefore directed the NANC "to make recommendations to the Commission . . . for modifications to the various technical and operational standards as necessary for CMRS providers to efficiently implement number portability and to allow CMRS providers to interconnect with a wireline number portability environment." *Id.* at 12334, ¶ 92.

The NANC was unable to fulfill the Commission's directive, however. As summarized in the Local Number Portability Administration Working Group's *Third Report on Wireless Wireline Integration*,[4] the working group was unable to resolve the issue of "disparity" between wireline and wireless carriers. *Id.* at 19. The reason for this "disparity" is that wireline-wireline portability is limited to carriers with a presence (either a physical point of interconnection or numbering resources) within the same rate center. Wireline carriers maintained that, at a

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[4] North American Numbering Council, *LNPA Working Group 3rd Report on Wireless Wireline Integration* (Sept. 30, 2000).

minimum, wireless carriers should be subject to the same limitation. Wireless carriers maintained that they should be able to port in numbers whenever they provided service within the rate center – a different rule from the one applicable to wireline carriers. The NANC was unable to resolve the issue and referred it to the FCC for further guidance. *See id.*

The FCC declined to provide any such guidance, however, and there matters stood for the better part of three years. In early 2003, CTIA filed a Petition for Declaratory Ruling, asking the Commission to rule that – despite NANC's inability to resolve the issue – wireline carriers should be obligated to port numbers to wireless carriers whenever the requesting carrier's coverage area overlaps with the rate center associated with the requested number. The Commission put the petition out for public comment.

The wireline industry informed the Commission that it could not adopt the rule that CTIA was requesting without issuing a notice of proposed rulemaking.[5] The Commission had made clear in its earlier orders that intermodal portability could not be implemented as a practical matter until various issues – including the rate-center disparity issue – were resolved. In addition, the Commission's rule requires wireline carriers to provide not just service provider portability but also *location* portability, because there is no reason to believe that the wireless customer will use the wireless service at the customer's original location. Because the Commission's prior rule made clear that petitioners were *not* required to provide location portability, such a change in rule could not be accomplished without a notice.

Moreover, the rule that CTIA asked the Commission to adopt was blatantly discriminatory, in violation of established norms under the Communications Act and the

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[5] *See, e.g.*, Ex Parte Letter from Kathleen B. Levitz, BellSouth, to Marlene H. Dortch, FCC, CC Docket No. 95-116 (Sept. 30, 2003).

Commission's prior orders. First, the rule puts wireless carriers at a significant advantage over other competing wireline carriers, which must establish a point of presence within the rate center to port in a number associated with that rate center. Second, the rule puts wireless carriers at a significant competitive advantage over all wireline carriers, because wireless carriers are able to port numbers from, and thereby compete for, wireline customers, while at the same time foreclosing such competition for their own customers simply by assigning their customers telephone numbers that are not associated with the rate center where the customer's principal address is located.

Despite the procedural and substantive failings of CTIA's proposed rule, the Commission granted the petition and adopted the new rule, significantly expanding wireline carriers' porting obligations.

DISCUSSION

In evaluating a request for a stay pending judicial review, the Commission employs the familiar test set out in *Virginia Petroleum Jobbers Association v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958) (per curiam), pursuant to which the Commission balances (1) the likelihood of success on the merits, (2) whether petitioners will suffer irreparable injury absent a stay, and (3) the effect of a stay on other parties and the public interest. *See, e.g.*, Order, *Auction of Licenses for VHF Public Coast and Location and Monitoring Service Spectrum*, 17 FCC Rcd 19746, 19753, ¶ 12 (2002); *see also Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977). In this case, each of these factors militates strongly in favor of a stay.

I. PETITIONERS ARE LIKELY TO SUCCEED ON THE MERITS

Petitioners are likely to succeed on their petition because the rule adopted in the *Order* – which requires wireline carriers to port out numbers in circumstances where they were never

required to port out numbers before – is an abrupt departure from the Commission's prior approach to this issue. "'[I]f a second rule . . . is irreconciliable with [a prior legislative rule], the second rule must be an amendment of the first; and, of course, an amendment to a legislative rule must itself be legislative.'" *Sprint Corp. v. FCC*, 315 F.3d 369, 374 (D.C. Cir. 2003) (alterations in original) (quoting *National Family Planning & Reproductive Health Ass'n v. Sullivan*, 979 F.2d 227, 235 (D.C. Cir. 1992)). That is the case here.

A. The *Order* Embodies a New Rule

The Commission characterizes the *Order* as a "clarification[]" of "wireline carriers' existing obligation to port numbers to wireless carriers." *Order* ¶ 26. That characterization cannot withstand scrutiny. Where, as here, "an agency changes the rules of the game . . . more than a clarification has occurred." *Sprint*, 315 F.3d at 374.

The *Order* departs from the rules established in the *First Report and Order* and the *Second Report and Order* in three fundamental ways.

First, in the *First Report and Order*, the Commission ruled that carriers would *not* be required to provide location portability, that is "the ability of users of telecommunications services to retain existing telecommunications numbers . . . when moving from one physical location to another." 11 FCC Rcd at 8443, ¶ 174. The requirement that wireline carriers port numbers to wireless carriers, even when those carriers have no presence within the rate center, thus conflict with the Commission's prior determination. Although the Commission stated that its rule "does not, in and of itself, constitute location portability, because the rating of calls to the ported number stays the same" (*Order* ¶ 28), its statement cannot be squared with the plain terms of its prior order. Without question, the current *Order* requires wireline carriers to port numbers

even when the subscriber "mov[es] from one physical location to another." That requirement cannnot be imposed without a rulemaking.

Second, those orders established a procedure for resolving the administrative and technical details of implementation of Commission number portability policy – *i.e.*, reference to the NANC. *See, e.g., First Report and Order*, 11 FCC Rcd at 8402, ¶ 95. With respect to intermodal portability in particular, the Commission recognized that implementation issues had not yet been resolved *and directed the NANC to resolve them. Second Report and Order*, 12 FCC Rcd at 12334, ¶ 92. Once the NANC determined that the rate-center disparity issue could not be resolved without further guidance from the Commission, the Commission had two options: it could provide further guidance and send the issue back to the NANC, or it could issue a notice of proposed rulemaking and take the process out of the NANC's hands. But, in light of where the Commission left matters under its prior rules, it could not simply order wireline carriers to port numbers to wireless carriers in circumstances where wireline carriers would not be able to make a comparable request. To do so was inconsistent with the industry-collaborative approach to resolution of intermodal portability issues adopted by the Commission in the *Second Report and Order.*

Moreover, the rule that the Commission adopted with respect to wireline-wireless portability is actually *inconsistent* with the rules governing wireline-wireline portability. Thus, the NANC guidelines – which were incorporated into the Commission's rules by reference, *see* 47 C.F.R. § 52.26(a) – limit porting "to carriers with facilities or numbering resources in the same rate center." *Order* ¶ 7. The Commission acknowledged that its prior orders "limit[] the scope of wireline carriers' porting obligation with respect to the boundary for wireline-to-wireline porting," but argued that prior rules "ha[d] never established limits with respect to

wireline carriers' obligation to port to wireless carriers." *Id.* ¶ 26. But the Commission's argument misses the point: in the absence of *any* requirement that wireline carriers port numbers to a requesting carrier that had no facilities or numbering resources in the rate center, the Commission could establish that requirement only by adopting a new rule, not by interpreting any existing obligation.

Third, and most broadly, the current rule represents a radical departure from the nondiscrimination and competitive neutrality standards that the Commission had embraced in its prior number portability orders. In the very Notice of Proposed Rulemaking that initiated this proceeding, the Commission affirmed that among the reasons for adopting number portability requirements was to ensure that the "telecommunications system" was "efficient *and fair*."[6] In adopting particular requirements for number portability administration, the Commission repeatedly stressed that it would be unacceptable for number portability to be a source of competitive disparity.[7] With respect to intermodal number portability in particular, the Commission again held that the industry could not implement any system that would produce discrimination between wireline and wireless carriers.[8] Notably, CTIA itself admonished the Commission that a number portability "solution that does not include wireless networks will not

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[6] Notice of Proposed Rulemaking, *Telephone Number Portability*, 10 FCC Rcd 12350, 12361-62, ¶ 29 (1995) (emphasis added) (citing 47 U.S.C. § 202).

[7] *See, e.g.*, *First Report and Order*, 11 FCC Rcd at 8403, ¶ 98 ("Allowing particular carriers access to the databases over others would be inherently discriminatory and anti-competitive."); *Second Report and Order*, 12 FCC Rcd at 12326, ¶ 78 ("We also require LECs to apply this blocking standard to calls from all carriers on a nondiscriminatory basis."); *id.* at 12330, ¶ 85 ("We also direct the NANC to address the needs of CMRS providers to ensure that number conservation efforts do not unfairly discriminate against such carriers.").

[8] *See Second Report and Order*, 12 FCC Rcd at 12334, ¶ 91.

achieve the Commission's goals of interoperability and *nondiscrimination*."[9] The statutory importance of nondiscrimination is emphasized repeatedly in the Communications Act, both in general and in the local number portability context in particular.[10] And the agency has established as a bedrock principle that numbering administration "[n]ot unduly favor or disfavor any particular telecommunications industry segment" and "[n]ot unduly favor one telecommunications technology" (47 C.F.R. § 52.9(a)(2)-(3)) – principles that the new rule deliberately violates. Moreover, the D.C. Circuit has made clear that an agency rule that mandates discriminatory treatment for similarly situated service providers is unlikely to be upheld. *See C.F. Communications Corp. v. FCC*, 128 F.3d 735, 740-41 (D.C. Cir. 1997).

There is no dispute that the *Order* abandons, with hardly a backward glance, the nondiscrimination requirements upheld in prior orders. The Commission did not (and could not) contest the point that, by granting CTIA's petition, it would adopt a rule that would create a significant competitive disparity in favor of wireless carriers. If two customers – located next door to one another – each seek to switch service to a different (intermodal) provider, a wireline customer (seeking to switch to wireless) would be able to do so; the wireless customer (seeking to switch to wireline) likely would not. *See Order* ¶ 27. Moreover, a wireline customer seeking to switch service to a different wireline provider would be unable to do so unless the wireline provider had a point of presence within the rate center – a requirement notably absent where the customer seeks to switch to a wireless carrier. *See id.* ¶ 7.

The Commission's defense of its about-face is wholly unpersuasive. The Commission simply declared that "[t]he fact that there may be technical obstacles that could prevent some

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[9] *Id.* at 12332, ¶ 89 (emphasis added; internal quotation marks omitted).

[10] *See* 47 U.S.C. § 202 (barring discrimination); *id.* § 251(e)(2) (costs of number portability must be borne "on a competitively neutral basis").

other types of porting [*i.e.*, wireless-to-wireline] does not justify denying wireline consumers the benefit of being able to port their wireline numbers to wireless carriers." *Id.* ¶ 27. But, until now, the Commission has frequently insisted that such technical disparities should not be permitted to produce a competitive disparity among different classes of providers. *See, e.g.*, *Second Report and Order*, 12 FCC Rcd at 12334, ¶ 91.

Moreover, adopting a policy of discrimination in this context is particularly inappropriate in light of the fact that the Commission refused to characterize wireline-wireless porting as "service portability" – as opposed to service *provider* portability – in the *First Report and Order*. *See* 11 FCC Rcd at 8443, ¶ 172. That is, the Commission required carriers to port numbers only when the porting-in carrier would provide the *same* telecommunications service as the porting-out carrier, but not for the provision of a different telecommunications service. Yet the Commission characterized wireline voice service and wireless voice service as the same service for this purpose precisely to ensure that number portability concerns would not block intermodal competition. *See id.* Thus, the Commission had a responsibility to ensure that number portability would promote intermodal competition – not distort it by deliberately favoring one type of service over another.

To be sure, the "focus of the porting rules [should be] on promoting competition, rather than protecting individual competitors." *Order* ¶ 27. But the rule that the Commission adopted in the *Order* does not permit competition on a level playing field; instead, it self-consciously promotes the interests of the wireless industry over the wireline industry. If reasonably equitable intermodal portability had been implemented, consumers would be better off. And the Commission, which has been aware of the obstacles to implementation of intermodal portability for more than *six years*, could have initiated a proceeding that would have enabled the industry

to establish such a regime. What the Commission could not do, however, was to adopt the inequitable rule contained in the *Order*.

B. The Commission Could Not Adopt the *Order* Without Notice and Comment

Under the Administrative Procedure Act ("APA"), informal rulemaking must be preceded by publication of a notice in the Federal Register. *See* 5 U.S.C. § 553(b). The Commission's failure to publish a notice of proposed rulemaking in the Federal Register before adopting the rule embodied in the *Order* violates the unambiguous requirements of the law and constitutes fatal procedural error that requires vacatur. *See Sprint*, 315 F.3d at 376-77; Order, *Sprint Corp. v. FCC*, Nos. 01-1266 *et al.* (D.C. Cir. Apr. 1, 2003) (clarifying that failure to provide notice would require vacatur of rule).

Nor can it be contended that petitioners received "actual notice" of the new rule prior to its adoption, sufficient to excuse the Commission's failure to adhere to the APA's procedural requirements. *See* 5 U.S.C. § 553(b). To take advantage of that provision, the Commission must be able to identify a particular communication that "specifically name[s]" the entity that would bear the brunt of the new rule (here, the petitioners). *Sprint*, 315 F.3d at 374; *see Utility Solid Waste Activities Group v. EPA*, 236 F.3d 749, 754 (D.C. Cir. 2001).

What is more, to qualify as "actual notice" under section 553(b), the communication relied upon by the Commission must be "adequate to afford interested parties a reasonable opportunity to participate in the rulemaking process." *MCI Telecomms. Corp. v. FCC*, 57 F.3d 1136, 1142 (D.C. Cir. 1995) (internal quotations marks omitted); *see also McLouth Steel Prods. Corp. v. Thomas*, 838 F.2d 1317, 1322-23 (D.C. Cir. 1988) (APA notice must be "clear and to the point"). By definition, a public notice seeking comment on a petition for *clarification* of an existing rule cannot provide adequate notice that a new rule is contemplated. Indeed, the public

notice, if anything, strongly suggested that the Commission would *not* impose any new obligations in response to CTIA's petition. As an initial matter, the notice was issued pursuant to delegated authority, and therefore could not signal that a change in rule was contemplated. *See Sprint*, 315 F.3d at 376; *see* Public Notice, 18 FCC Rcd 832 (2003). Moreover, the text of a subsequent notice on a related CTIA petition stated that "many of the issues associated with the implementation of LNP have been resolved by consensus in industry fora, including the North American Numbering Council (NANC)," but added that "there are a number of outstanding issues that cannot be resolved without *specific direction* from the Commission." Public Notice, 18 FCC Rcd 10537 (2003) (emphasis added). Yet the Commission did not provide specific direction to permit industry resolution of this issue – it adopted a new rule on its own.

Nor can it be contended that the Commission's procedural error was harmless. Failure to adhere to the notice requirements of the APA mandates reversal as long as there is "any uncertainty at all as to the effect of that failure." *Sugar Cane Growers Coop. of Florida v. Veneman*, 289 F.3d 89, 96 (D.C. Cir. 2002) (citing *McLouth Steel Prods.*, 838 F.2d at 1324). In this respect, petitioners "need not" identify "additional arguments" or "considerations they would have raised in a comment procedure." *Id.* at 96-97 (noting that such a requirement would "eviscerate[]" section 553); *see Sprint*, 315 F.3d at 377 ("a showing of actual prejudice is not required" in a notice claim under section 553). Rather, it is enough to establish that the effect of the FCC's procedural failings "is uncertain." *Sprint*, 315 F.3d at 377.

Petitioners easily satisfy that standard here. By proceeding without issuing a notice, the Commission severely constrained petitioners in their ability to propose solutions to technical and regulatory barriers to intermodal portability that would have enabled the Commission to proceed in a balanced, nondiscriminatory fashion. Such technical and regulatory issues require

comprehensive analysis, as well as vetting by all interested parties – which is precisely why issues such as this one are ordinarily resolved by industry collaborative proceedings or, failing that, by a rulemaking that provides all parties an adequate opportunity to comment. Here, by contrast, while the bulk of the Commission's attention was directed at issues related to wireless-wireless portability – which did not even identify the specific issues that the Commission might address – was the only indication that a significant policy decision was imminent. Such procedural laxity is wholly inconsistent with the APA and fundamental fairness.

In addition, the Commission's procedural short-cut prevented petitioners and other interested parties from fully developing a record on the competitive distortions that would necessarily follow from implementing intermodal portability before the disparity of treatment between wireless and wireline carriers was resolved. Had the Commission issued a proper notice, such issues could have been addressed in a more comprehensive fashion, and competitive neutrality could have been preserved.

II. THE BALANCE OF EQUITIES FAVORS A STAY

The *Order* will harm petitioners because they will face an unfair fight. They will lose thousands of customers to wireless carriers now able to offer existing wireline customers number portability. Yet they will be unable to offset those losses – or to join battle with the wireless carriers on their own turf – not because of any limitation in their product, but simply because wireless carriers will have no obligation to port customers' numbers to competing wireline carriers. Such net customer losses – which would stem not from competition on the merits but rather from the inequitable effects of the Commission's *Order* – establish irreparable injury. *See, e.g., Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 552 (4th Cir. 1994). That the net customer losses could never be remedied bolsters the showing

of irreparable harm. *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (suggesting that, in the absence of "adequate compensatory or other corrective relief," "economic loss" amounts to irreparable harm) (citation and internal quotation marks omitted); *cf. Independent Bankers Ass'n of Am. v. Smith*, 534 F.2d 921, 929-30, 951-52 (D.C. Cir. 1976) (losses that stem from "competitive disadvantages" based on unfair competition constitute irreparable injury).[11]

Nor is there any cognizable harm to wireless providers from a stay of the intermodal porting requirement pending the development of a set of rules that guarantees competitive neutrality. First, the wireless industry has long opposed the implementation of number portability and therefore cannot plausibly argue that the lack of intermodal portability poses a significant barrier to their efforts to attract customers. Second, a stay will simply leave wireline and wireless providers with symmetrical number portability requirements; wireless carriers will be at no disadvantage.

Finally, the public interest likewise favors a stay. A stay will forestall the expense and consumer confusion that would result from premature implementation of intermodal portability. It stands to reason that many of the individuals most interested in intermodal portability are also individuals who may be likely to change residences often within the same urban area. Such individuals are also likely to want to switch numbers repeatedly from wireline to wireless carriers and back as their communications needs (and service coverage) vary. Implementation of

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[11] Moreover, LECs will be obligated to incur substantial expense to implement the intermodal local number portability ("LNP") capability that the Commission has required; the Commission has not even determined whether (let alone how) LECs will be able to recover those expenses. *See* BellSouth Corporation Petition for Declaratory Ruling and/or Waiver, *Telephone Number Portability*, CC Docket No. 95-116 (filed Nov. 14, 2003) (implementation costs associated with wireless LNP estimated at $38 million for BellSouth alone).

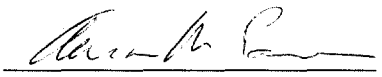
intermodal portability promises such flexibility, but, as implemented by the Commission, it is a false promise. Customers may be able to port wireline numbers out, but there is no guarantee that they will be able to port them back. The public interest does not benefit from such a fundamentally skewed and confusing rule.

In addition, because the Commission acted too precipitately, it also failed to address a number of important consumer protection issues related to intermodal portability. First, consumers will likely be unaware that, because wireless carriers have failed to implement E911 capability, consumers will be unable to rely on the 911 system automatically to direct emergency personnel to their location. (This assumes that a consumer is able to obtain a signal at all.) Second, the cost of implementation of intermodal capability may produce significant consumer harm in many small and rural exchanges. *See* Ex Parte Letter from Gerard J. Duffy to Marlene H. Dortch, FCC, CC Docket No. 95-116 (Oct. 20, 2003). Hundreds of smaller ILECs operate exchanges with only a few hundred customers. The implementation costs associated with LNP deployment in rural markets places a disproportionate end user charge on rural customers because of low customer density; yet there may be no immediate local number portability benefit for these customers. Third, there is simply no established method for routing and billing calls that have been ported out of the local exchange – a matter that would have been addressed had the issue been resolved in the industry forum as the Commission had originally required. Implementation of the *Order* before these issues are addressed will harm the public interest.

CONCLUSION

The Commission should issue a stay pending appeal of the *Order*.

Respectfully submitted,



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